

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

JOHN FULWEILER) CASE NUMBER:
)
Plaintiff) JUDGE
)
v.)
COSTCO WHOLESALE CORPORATION, et al.) <u>DEFENDANT COSTCO WHOLESALE</u>)) <u>CORPORATION'S NOTICE OF</u>)) <u>REMOVAL OF CIVIL ACTION TO THE</u>)) <u>UNITED STATES DISTRICT COURT</u>)) <u>FOR THE SOUTHERN DISTRICT OF</u>)) <u>OHIO</u>
Defendant	

Now comes Defendant Costco Wholesale Corporation (“Costco”), by and through counsel, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, and respectfully requests that this Court remove this action from the Hamilton County, Ohio Court of Common Pleas to the United States District Court for the Southern District of Ohio. In support of this request, Costco states as follows:

1. Costco is one of two Defendants in a civil action pending in the Hamilton County Court of Common Pleas, captioned *John Fulweiler vs. Costco Wholesale Corporation, et al.*, Hamilton County C.P. Case No. A 2100895. The other Defendant is Niagara Bottling, LLC, 1440 Bridgegate Drive, Diamond Bar, California 91765. Plaintiff filed his Complaint on March 11, 2021.¹ The Hamilton County Court of Common Pleas Clerk of Courts issued a Summons upon Costco on March 12, 2021.²

¹ A true and accurate copy of Plaintiff's Complaint is attached hereto as Exhibit A.

² A true and accurate copy of the summons is attached hereto as Exhibit B.

2. Costco's first notice of the above lawsuit was on or about March 15, 2021, when the Complaint was allegedly served on Costco's statutory agent in Columbus, Ohio.³ Accordingly, March 15, 2021 was the first notice Costco had of Plaintiff's Complaint.

3. Costco filed its Answer to Plaintiffs' Complaint on April 12, 2021.⁴

4. Costco files this Notice of Removal pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

5. Plaintiff's Complaint stems from allegations that a hazardous substance in the form of water bottles was caused to be on the floor of the store causing Plaintiff to fall, resulting in injuries. Based on this, Plaintiff has brought claims for negligence against Costco and claims for product liability against Niagara Bottling, LLC.

6. Upon information and belief, Plaintiff is an individual residing at 213 W. 33rd Street, Covington, Kentucky 41015.

7. Costco is a Washington state corporation with its primary place of business located at 999 Lake Drive, Issaquah, Washington 98027.

8. Upon information and belief, Defendant, Niagara Bottling, LLC, is a limited liability company doing business in the State of California with a primary address of 1440 Bridgegate Drive, Diamond Bar, California.

9. Upon information and belief, Plaintiff's Complaint seeks in excess of \$75,000.00 in damages.

³ A copy of the current docket in the Hamilton County Court of Common Pleas case is attached hereto as Exhibit C. A copy of the current service page on the docket for the Cuyahoga County Court of Common Pleas case is attached hereto as Exhibit D.

⁴ A copy of Costco's Answer is attached hereto as Exhibit E.

9. Given the complete diversity of the parties' citizenship and the amount in controversy, this Court has original subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. As such, this action is subject to removal pursuant to 28 U.S.C. § 1441.

10. Costco has filed this Notice of Removal within the time requirements outlined in 28 U.S.C. § 1446. In particular, Costco was allegedly served with a copy of the Summons and Complaint on or about March 15, 2021. Therefore, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(a).

11. Costco has served a copy of this Notice of Removal upon Plaintiff, as well as filed it with the appropriate state court, pursuant to 28 U.S.C. 1446(d).

12. Costco asserts its right to a trial by jury.

13. Costco does not waive any jurisdictional or other defenses available to it.

14. Costco reserves the right to supplement this Notice of Removal and/or to present additional arguments in support of its entitlement to removal.

WHEREFORE, Costco prays for removal of the above-referenced civil action from the Hamilton County, Ohio Court of Common Pleas to the United States District Court for the Southern District of Ohio.

Respectfully submitted,

/s/ Dennis R. Fogarty
DENNIS R. FOGARTY (0055563)

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CERTIFICATE OF SERVICE

I hereby certify that Defendant Costco Wholesale Corporation's Notice of Removal of Civil Action to the United States District Court for the Northern District of Ohio was electronically filed with the Court on April 14, 2021. Notice of this filing will be sent by operation of the Court's case management and electronic case filing system. Parties may access this filing through the Court's case management and electronic case filing system.

/s/ Dennis R. Fogarty
DENNIS R. FOGARTY (0055563)
Attorney for Defendant
